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# Property Rights and the Role of the State: Evidence from the Horn of Africa

Sandra F. Joireman

*University of Richmond*, [sjoirema@richmond.edu](mailto:sjoirema@richmond.edu)

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**Property Rights and the Role of the State: Evidence from the Horn of Africa**

**S. F. Joireman, Ph.D.**

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## **Abstract**

*This study applies extant theories of property rights change to three land tenure systems in Imperial Ethiopia. Two of the areas underwent changes in property rights after experiencing changes in the value of land; one did not. A data set of litigation over land rights is used in conjunction with case studies to understand the mechanisms motivating or impeding property rights change. Amendments to the role of the state are suggested and two conclusions are reached 1) that movement towards greater specificity of land rights did not always occur and 2) the changes in property rights that occurred were imposed from above, rather than occurring endogenously. Where property rights changes did not occur, they appear to have been blocked by the state, which was more concerned with political survival than with revenue maximization.*

## **Property Rights and the Role of the State: Evidence from the Horn of Africa**

The institutions that undergird the functioning of markets in the developing world have come under scrutiny as efforts at development have been less effective than scholars have predicted. While modes of exchange and state/society relations are key to understanding political and economic systems in the developing world, so too are the existing systems of property rights. This article seeks to test and expand the economic theory of property rights with quantitative evidence from litigation in Africa.

The article will begin with a very brief sketch of the extant theory of property rights emphasizing its applied branch of induced institutional innovation. The mid-section of the paper details two historic case studies: Sidama and Hamasien, both areas of Imperial Ethiopia where property rights change occurred when the model predicts but not in the manner predicted. The final section of the paper investigates what happened in a third area of Imperial Ethiopia that did not correspond to the model of property rights change. We begin with some definitions.

Scholars generally define institutions as rules, traditions or conventions that govern behavior. They can be formal, as in the case of codified laws, or they can be informal, as is often true of traditional rules and customs. Because they govern behavior in a society, institutions play a role as essential as factor endowments to the economic functioning of a society. Even in societies in which formal market practices are less dominant, institutions govern informal or traditional methods of exchange. Property rights, refer to the rights of control over an object, a piece of land, or a resource, within the bounds of the law. I will be focusing herein on the rights of control over land that refer to, among other things, control over the use, rental, fruits, investment in and dispossession of the land.

The theory of property rights change has been constructed by economic historians concerned with the institutional structure of economic systems. Douglass North and his

collaborators, Lance Davis and Robert Thomas, develop the idea that a change in relative price, usually as the result of population growth, alters the incentive system within a society and leads to a revision in the institutional structure which will allow the actors to take full advantage of the new environment [Davis and North 1971; North and Thomas 1970]. North follows in the footsteps of Demsetz [1967] and Coase [1937], who noted that the benefit of the new institutional environment can come in the form of the internalisation of externalities, or in terms of economies of scale and the lowering of risk of market failure. This early model of property rights change, allowed for, but did not emphasize the role of political factors in directing or influencing property rights change.

## **Africa**

When we examine the African continent we can identify two historic paths of state intervention in the determination of property rights.<sup>1</sup> In some instances, the state has interceded in a society to push property rights in the direction of communal tenure, as throughout Africa during the colonial era when metropolises established a body of customary law that was typically unfamiliar to their colonies [Mamdani 1996]. In other instances, such as colonial Uganda, the state has moved to privatise rights to land where they had previously been collective, still under the rubric (and justification) of customary law.

Some scholars have identified state intervention in the allocation of property rights as an advantage to a society in eliminating the political bargaining that antedates any endogenous change in property rights. The state, as the institution in a country with a monopoly on power, can intervene and redistribute land or other property rights in a way that circumvents individuals, interest groups and the market. Additionally, with state intervention and the imposition of institutions from above, it is theoretically possible for a society to avoid the extensive costs of changing a system of property rights by providing a legal framework that brings an immediate

change instead of a gradual transition; though doing so may also generate litigation costs as the 'losers' in the transition seek recompense.<sup>2</sup>

Even in the best of circumstances, significant disadvantages may accrue to attempts to implement institutional change from above. First among them is the fact that a state can intervene in a society only to the extent that it has control over that society and, in Africa, sometimes this means that a state can intervene very little. Indeed, most African governments are able to exert strict control over events in their capital cities, and even in some larger cities outside of the capital, but they lack both the administrative structure and the resources to secure consent at the local level in rural areas.

Opposing the reach of the state in the countryside are strong traditional institutions governing local land rights, the allocation of authority and even the use of force. The power of traditional institutions in Africa has been widely remarked upon [Chazan and Rothchild 1988; Sklar 1993]. Informal and formal systems of authority are often intertwined as a direct result of colonial policies such as 'indirect rule' that vested traditional chiefs with local and regional authority that they did not previously hold. The state/society division that sustains itself in other parts of the world should not be assumed in the African context, where the state agenda may be, without alteration, the agenda of a particular ethnic or regional group and the society may be fulfilling the administrative and enforcement roles we associate with the state.

The second inherent problem with the imposition of institutional change from above is that, because the state can function apart from the market, it may not take market forces into account and can create an inefficient economic environment. Only a very sophisticated and vigorously enforced intervention can successfully alter an institutional system of property rights in favour of economic efficiency.

The preceding section has identified the theoretical contributions of economic historians and the refined version of property rights change. However, when the theory is applied by those

concerned with praxis, it takes on a directive character, typically and most frequently that of the evolutionary model of property rights change [Platteau 1996].<sup>3</sup>

### ***Property Rights Theory in Practice***

It is assumed by scholars of the evolutionary model of property rights, that any modification in property rights will be in the direction of greater specification, culminating in the strictest definition of individual rights, private property [Ault and Rutman 1979; Barrows and Roth 1990; Johnson 1972]. Proponents of this early, economic model of property rights change, such as Prabhu Pingali and Hans Binswanger [Pingali and Binswanger 1986], base their support on empirical data suggesting that land rights move towards privatisation when population increases. Gershon Feder and Raymond Noronha [Feder and Noronha 1987] recognized that in Africa as land became scarce the definition of land rights on a communal basis was no longer satisfactory for the functioning of the economy [See also Feder et al. 1988]. Feder and Noronha observed that in Sub-Saharan Africa many tenure systems are moving towards providing security of tenure and the benefits of individualized holding while, in other areas, individualized land holdings were the traditional institution of land tenure. They conclude that individualization of land holding is *necessary* to capture the benefits of economically efficient farming.<sup>4</sup> Feder and Noronha support the position that land tenure evolves towards greater economic efficiency with privatisation as the eventual outcome.

The evolutionary model would tell us that the specification of land rights to ensure greater access to credit and investment comes from within the local environment. Technical change or population growth, factors endogenous to the locality, are the impetus. This is why the model is sometimes referred to as induced institutional innovation by development economists. The model is linear, progressing towards privatisation and individualisation of rights with state cooperation in titling and registration.



Replacing the parsimonious, evolutionary theory that posited an institutional change in response to relative price changes are two more developed models which account for the role of societal interests in institutional change: a more sophisticated economic theory of institutional change and a public choice model. The more sophisticated economic theory proposes that institutional change comes about as actors seek to take advantage of opportunities for economic gain. Like the first interpretation of the theory, institutional change in the area of property rights develops in response to a change in relative prices caused by population growth, market development or some other endogenous change progressing to a greater specification of property rights. Where the new economic theory diverges from the old is in its reference to individual actors. The more sophisticated economic theory argues that we should not expect to see a change in property rights occur unless “actors are guaranteed a payoff at least as large as under the status quo rules” [Weimer 1997:11]. In other words, individuals will not aid a change in the rules of the game that they think will lead to a personal loss of income, political power or whatever they might value.

The public choice model of property rights change emerges out of the thought of North, and Thomas and Davis [Davis and North 1971; North and Thomas 1970]. The state is viewed as a strategic actor in the development of new property rights, moving to take advantage of new economic opportunities through changes in the rules of the game. The state is viewed to be pursuing its own interests, which are centred on revenue maximization. The state is not a black box in public choice theory, but an active and independent actor in the economy.

These efforts to reconstruct property rights theory in light of new research and changing realities are exciting. Indeed, the new theories answer the call from scholars demanding a more political model of property rights change [Bates 1990; Firmin-Sellers 1996]. Yet, there is still a need for refinement in the theory, particularly regarding the role of the state. In the early articulation of property rights theory the state, indeed all political variables, were ignored or

assumed. As the theory developed, the public choice literature considered the state to be a player, but one with an interest only in revenue maximization. This was a laudable improvement in the theory, but the role of the state is not always so obvious.

This paper examines property rights development through the empirical analysis of three areas of Imperial Ethiopia (before the 1974 revolution). In each of the cases it is possible to identify specific moments of change in the price or value of land relative to the other factors of production, labour and capital, which the theory tells us should be followed by a change in the land holding institutions. The discussion of the cases is divided into two parts. The first part will analyse those areas in which relative price changes led to institutional change as the theory predicts: Sidamo and Eritrea. The second will be a detailed discussion of an area in which a change in relative prices did *not* cause a corresponding change in property rights, Tegulet and Bulga area of northern Shoa.

### **Case 1: Sidama area, Sidamo province**

The Sidama area is one in which experienced the change from a collective tenure system, to serfdom and then to tenancy with the development of coffee farming in the southern areas of Ethiopia. This particular case is interesting in that the impact of agricultural commercialisation is so pronounced. The property rights and indeed the freedom and livelihood of the Sidama people were dramatically altered with development of coffee as a major export crop in Ethiopia.

Institutional change in land tenure in Sidamo develops with the intensification of coffee cultivation. Ethiopian popular lore alleges that the coffee plant originated in the southern Ethiopian region of Keffa, hence the name coffee. While indigenous to the area, coffee was not exploited as a cash crop until Menelik became emperor of Ethiopia in the late 1800s. Though Menelik understood the potential value of coffee to the country, the structures instigated to take advantage of its potential were not in place until Haile Selassie's rule as emperor began in 1930.<sup>5</sup> Evidence of

government interest in the development of coffee first occurs during Menelik's rule with the establishment of toll points on the periphery of coffee producing areas. Through these toll points, a tax, levied on all coffee leaving the region, was remitted to the regional administrators and, eventually, to the central government [McClellan 1986]. By the 1920s, toll points could be found throughout southern Ethiopia [Marcus 1996:79]. However, at that time most of the revenue gained from customs taxes went to the coffers of regional lords. It was not until 1925 that Haile Selassie (then still prince regent Ras Tafari) established a centralized customs authority designed to ensure the remittance of these revenues to the central government [Zewde 1991:99].

The verdant northern areas of Sidamo province were inhabited by Oromo, Gedeo and Sidama people, settled agriculturists who cultivated coffee, ensete and vegetables. Onto this landscape, in the late 1800s and early 1900s, appeared the soldier-farmers from the north, the *neftenya*<sup>6</sup> given land grants by Menelik and Haile Selassie. With the influx of these northerners, primarily but not exclusively Amhara from Shoa Province [McClellan 1986:179], coffee farming and production began in earnest. The arrival of soldier-farmers was an important step in assuring a regular stream of coffee exports from the region as they planted coffee and ensured its cultivation by indigenous peoples. The process continued with the shift of rights and obligations of the local people from serfdom (tenancy with labour and gift requirements as well as no exit option) to common tenancy in the 1920s and 1930s. In the early years of the northern settlement, labour was considered to be as essential as land in the production of coffee and some northerners were reluctant to take land unless it came with a corresponding labour pool of *gebbars* or peasants (McClellan 1988:83). By the 1920s the first wave of *neftenya* was already present as lords on the land. However, they were not necessarily wealthy from their acquisitions. The second wave of *neftenya* who came during the 1920s, 1930s and later took on a different role, acting as landlords, rather than overlords, concerned more with revenue generation than position.<sup>7</sup>

Logistical problems involved in growing coffee, transferring it to Addis Ababa and out of the country through government channels were an incentive for the government to continue its policy of land grants from the late 19<sup>th</sup> to the early twentieth century and beyond. Without the feudal system of rights established by the land grant program, it would have been possible, though dangerous and potentially very expensive due to the presence of bandits, for coffee growers to export their coffee through Kenya or Sudan; thereby depriving the Imperial government of the collection of export taxes that hinged on coffee passing through regulated exit points within Ethiopia.

Actual export figures for coffee are not available for this period. However, Figure 1 displays the importance of coffee to the export market in the years preceding the revolution. We can expect that the situation was similar, if not more pronounced, in the earlier Imperial era.

[Figure 1 here]

Property rights theory would suggest that increasing land value would lead to the increased privatisation or individualisation of land to ‘internalise externalities’. The people of an area experiencing an increase in land value would want to assure themselves of the profits from the fruits of the land. They would, therefore, seek to make explicit land rights previously held in a customary fashion, with flexible boundaries and without title.

The change in relative prices that we seek can be identified in the development of coffee as a cash crop and the subsequent increase in the value of land. Land changed from being useful for subsistence to essential for revenue generation. Its value increased in the change, although due to a dearth of data from that time period we cannot say exactly how much land values increased. However, we can posit with confidence that before the turn of the century land in Southern Ethiopia was plentiful and because of its availability, of negligible value. Property rights theory also

correctly identified the timing of the subsequent change in land rights from collective to tenancy of the peasants in the area. What the theory does not and perhaps cannot identify was the role of external actors (here the state) in changing and enforcing an entirely new system of property rights.

Though the change in relative prices that occurred when coffee was developed led to a change in property rights, the method in which this change was effected was anything but endogenous and had rather severe distributional repercussions as the indigenous peasantry saw their land rights become more specified, but also alienated into the hands of the *neftenya*.

## **Case 2: Hamasien**

Because Hamasien was a part of Eritrea, it is different from the other two case studies in that there was a colonial government. This government was instrumental in forcing a change in the property rights system from individually held, hereditary land (*risti*) to collective land tenure based on residence in a village (*diessa*). The Italian reasons for dictating this change in land tenure are articulated below. The end result was a move away from individualized tenure (and the loss of security in a particular plot of land) in an attempt to preserve social order and facilitate the administration of the Eritrean colony.

Italian occupation of the Eritrean territory from 1886 until 1941 gave the Eritrean province an experience of colonialism not shared by the rest of Imperial Ethiopia. Italian colonization led to the claim to a separate history that later gave birth to the Eritrean independence movement. However, during the time under study here, the Eritrean province was under the control of the Italians and subsequently the Ethiopian state. Italian colonial possession of Eritrea lasted from 1886 until 1941. From 1941 until 1952, Eritrea, along with other former Italian colonies of Libya and Italian Somaliland, was a protectorate under the immediate control of the British Military Administration. In 1952, the Four Powers Commission of the United Nations ceded control of the Eritrean colony to Ethiopia in a federation. Eritrea remained federated under Ethiopian control

until 1962, at which time the Ethiopian state moved to incorporate Eritrea as the fourteenth province of Ethiopia.

Before the Italians officially occupied the colony in 1886, the lowland areas of the province were home to nomadic pastoralists of the Beni-Amer and Afar peoples, while the highland areas, including Hamasien, were primarily the domain of Tigrayan, Christian agriculturalists who farmed grain crops on unirrigated land.<sup>8</sup> Because rainfall was variable on the plateau, agricultural yields changed significantly from year to year, leading to a cycle of drought and famine familiar to the rest of the Horn. There were three tenure systems that existed on the plateau before the Italians came. The first was *risti* land,<sup>9</sup> similar to the *rist* land that existed throughout northern Ethiopia. This was a tenure system in which the land was occupied and farmed by an individual who maintained the right to transfer the land to his or her children, but the land was ultimately considered to belong to the lineage group and was not alienable. Land changed hands in the *rist* or *risti* system through inheritance or litigation. The second type of tenure was *diessa*, a system that was communal by residence, in which land changed hands every five to seven years and was distributed among those people living in the village with status as residents of the community. The last type of tenure was private land that had been acquired through purchase. Private land was held in small parcels throughout the plateau. Traditionally, communal lands were taxed by regional lords in a system called *gult*, which required the payment of tribute in honey and labour as well as a tithe of the crops.<sup>10</sup>

The Italian colonial administration envisioned Eritrea to be a settler colony and they arranged land expropriation with that in mind. Every Italian family that came to Eritrea was guaranteed between eight and twenty-five hectares of land depending on the quality of the land. This land was given to them on a twenty-year lease. If the family or person to whom the land was granted cultivated and paid taxes on the land for the duration of the contract, the land would be granted to them in perpetuity at the end of the twenty years [Bollettino Ufficiale 1895]. The

amount of land promised to the settling families and the area needed for other purposes such as agricultural experiments, state farms and government offices, meant the eventual expropriation of almost half the arable on the highland plateau [Mesghenna 1989:157]. It was the most valuable land, that which was naturally irrigated by rivers or regular rainfall, which was first appropriated [Gebre-Medhin 1989:55].

The net effect of Italian colonial policies was to change the relative price of land for Eritreans. While land expropriation made land access easy for the Italians, it increased land scarcity and therefore land value in relation to other factors of production for Eritreans. Colonization and the change in relative prices that it brought should have eventually led to a change in the land holding institutions of the Eritrean peasants. Yet, Italian intervention in the rural land institutions was also proactive. Rather than leave the indigenous tenure institutions to adapt to changes in relative prices of their own accord, the colonial government chose to legislate changes in the institutions from above. These imposed alterations to the land holding institutions occurred in two areas: use rights and the traditional tenure system, *diessa*.

### ***Use rights***

The Italian administration restricted land ownership to Italians alone and gave the Eritreans usufruct rights to the land that they occupied. In the lowland areas of the country the government claimed most of the land as *demaniale* or 'state' land. Pastoralists were allowed to graze herds on these lands in the traditional manner without holding any legal rights. Many of the pastoralists found this situation unacceptable and, as a result, Italian attempts to gain land in the lowlands were occasionally met with violence.<sup>11</sup> Agriculturalists were also restricted to use rights rather than ownership rights to land but, because they were left to farm without intervention, this change in property rights was not entirely apparent until the Italians took more forceful action in the alteration of the communal systems of land tenure that existed. Direct

government interference into the land holding institutions on the highland plateau did not take place for several decades after colonization, largely due to the lack of colonial infrastructure in the countryside.

### ***Diessa***

As Italian immigration to the colony grew, the need for arable land increased. The Italian immigrant community grew until, by 1941 when the Allied Forces pushed out the colonial government, the Italian population was up to 70,000. During the 1920s and 1930s there was also a movement of people from the Tigray province of Ethiopia into Eritrea. With the *risti* tenure system it was impossible to incorporate these newcomers into the life of the rural community because they were not allowed access to land or full membership in the decision-making of the community [Taddia 1986].<sup>12</sup> Additionally, the Italians observed that the *risti* system led to a diminution of holdings and litigation over land rights that clogged the judicial and administrative systems of the colony.<sup>13</sup> As a solution to these problems, in the 1930s the Italians declared the suspension of *risti* in two of the three highland provinces: Hamasien and Akelle-Guzai. In these two areas, the most fertile in the colony, all Eritreans had their *risti* systems changed to *diessa*, village tenure. *Diessa* existed before the arrival of the Italians, but *risti* was the dominant tenure institution in Hamasien. In the *diessa* system, ownership rights were vested in the village and each village had set residential and field boundaries that the village leadership had power to allocate. The change in tenure institutions had two immediate results: the admission of immigrants into cultivation and the allocation of land held by individuals into common village lands. As land transferred to the control of villages, village elders became responsible for the redistribution process that occurred every five years. This effectively removed the transaction costs resulting from disputes over inheritance and land transfer under the traditional system. Yet,



at the same time individuals lost the security of the guarantee of a particular plot and certainly lost the benefits that could be gained from investment in their fields.<sup>14</sup>

In at least one study of an indigenous community in Tigray, in an area close to the Eritrean border, Giovanni Ellero noted that communities did sometimes shift between *risti* and *diessa* prior to the juridical change by the Italian administration. Ellero described in Uolcait (or Wolqait), a mass exodus of people from the region at the time of the fall of Yohannes IV, due to fighting in the area. When the people returned after a three year absence it was decided that land previously held as *rist* would be changed to *diessa* so as to better accommodate the new arrivals and determine who would be responsible for the payment of taxes [Ellero 1995:126]. Ellero's findings are consistent with other studies of Tigray, the neighbouring region where much later both John Bruce and Dan Bauer noted the existence of *rist* and *diessa* communities side by side and also indicated that transitions between the two systems were politically difficult to negotiate, but not unheard of and used as a method of helping communities adapt to population change [Bauer 1972; Bruce 1976].

In Eritrea, institutional change occurred following changes in the relative value of land. Yet, the shifts in property rights institutions that developed (and became law) were not endogenously generated and not in the direction of individualized rights. One area of Eritrea where the Italians did not alter the tenure system was in Seraye, the last of the three highland provinces. In Seraye, the *risti* system continued into the 1990s with no endogenous institutional change despite significant manifestation of relative price changes. This indigenous tenure system was able to remain in place through decades of population growth and several changes in government. The experience of Seraye suggests that without colonial intervention, the *risti* system may have continued in Hamasien and Akelle-Guzai regardless of transaction costs and diminution of holdings.<sup>15</sup>

## **Sidama and Hamasien**

Sidama in Ethiopia and the Hamasien area of Eritrea represent two areas where changes in land value led to changes in property rights much as property rights theory would suggest. Sidama and Eritrea are similar in that they both experienced an influx of people and administrative structures from outside, that affected both the ratio of land to labour and the development of institutions. For Eritrea, the imposition of administrative structures came about as a result of colonialism, in a manner similar to the rest of the African continent. Sidama is a distinctly different and interesting case; the conquest that occurred there came from within Ethiopia, as the northern soldier-farmers moved into the area and enserfed the peasantry under government auspices.

One key lesson to be learned from the experiences of Eritrea and Sidama is that institutional change in response to relative price changes may be instituted from above - exogenous to the traditional system of tenure rights and the actors within that system. Both Sidama and Eritrea, neither of which spontaneously altered land holding or allocation institutions aptly demonstrate this. Instead, institutional changes in response to changes in the relative price of land occurred, or were altered by the arrival of a foreign, regional administration. The imposition of a change in property rights from above, in both cases demonstrates the resistance of traditional institutional structures to changes in relative prices and the role of government or administrative bodies in compelling institutional adaptation, for better or for worse.<sup>16</sup>

## **Case 3: Tegulet and Bulga, Shoa Province**

Most of northern Shoa province, and indeed northern Ethiopia, maintained some form of *rist* or *risti* tenure system prior to the revolution. This property rights system allowed for individually held, heritable land, but the land was for the most part inalienable, as it was considered to be owned by a lineage rather than an individual.<sup>17</sup> Tegulet and Bulga maintained this system of

property rights through a period of agricultural commercialisation and population growth without changing to a more individualized system allowing for alienable rights and private property. Changes in the system did occur, but they were alterations in the contractual agreements on land rental and as such did not constitute changes in the 'rules of the game' or how the tenure system operated.

Tegulet and Bulga diverges from the experiences of the other two areas because no external intervention of any sort occurred there. Instead, the increase in land values relative to other factors of production such as labour was a result of the gradual commercialisation of agriculture and population increase in the province during the mid-twentieth century. The history of commercial development in the Shoan area has been the subject of several studies, of special interest is the work that has been completed on the grain market in the Shoan countryside, discussed below.

Before the market economy developed in the Ethiopian countryside, barter was the norm, with cash in the form of Maria Theresa dollars used sparingly,<sup>18</sup> mostly for the purposes of taxation. During the 1950s Haile Selassie began to develop the banking and marketing institutions of the country. Mechanisms for the transportation and marketing of grain emerged in the countryside as demand grew and the infrastructure to support a market was put in place.<sup>19</sup> Infrastructural development made farming more profitable as surplus crops could be sold for supplementary income. The commercialisation of agriculture increased the value and the demand for land as farmers sought to take advantage of new market possibilities. At the same time, population in the countryside was growing, leading to an increase in the relative scarcity of land. Changing demand for land and increasing land values or land competition Occurred in response to the development of the grain market and the rising population.

Population growth was occurring at a rapid rate in the Ethiopian countryside throughout the late 20<sup>th</sup> century, though it was sometimes difficult to determine this from government statistics. Prior to 1984, the government Central Statistical Office calculated population figures by using

random sample surveys at various places throughout the country. These were then used to estimate the population and growth rates for all areas of the country. Throughout the 1960s and 1970s the government statistics show the population rising at a steady, but moderate 1.02 per cent/yr in urban and rural areas of the north and the south. This is hardly convincing or revealing. By the time the first census was taken in 1984, it was clear that these figures had significantly underestimated population growth rates, which were nearer to 3 per cent/yr. As an example, 1980 population statistics for Tegulet and Bulga showed a population of 423,000 people. Four years later, when the census occurred the population statistic jumped to 568, 590 people, over a third higher than that predicted just a few years earlier [Commission 1989]. A backward estimation of population using the 1984 census results and demonstrates more than a doubling of the population during the years of the study. If more conservative population growth rates were used, the results would be equally persuasive that population growth during this time period was significant and certainly more so than the government at the time was either able to determine or willing to admit. Even in the absence of precise or convincing population statistics, there is ample evidence from anecdotal reports that population was, in fact, increasing throughout northern Ethiopia [Bauer 1972; Ellero 1995].

If we are to search for empirical evidence of an increase in the relative price of land, we should begin in the 1950s, when the cash economy began to flourish after the war, and look for any shift in land value or competition for land. There is anecdotal information available from anthropological studies conducted in nearby provinces that suggest that increasing populations were effecting the land tenure institutions there [Bauer 1972]. Though there is no similar information for Tegulet and Bulga, any change should have occurred in the period for which we have court records. Because there are no formal records of the price of land in Shoa province, due to the restrictions on land sale, and because we also know from the study that land sales outside of a family were infrequent [Weissleder 1965; Work 1962], we are compelled to look back to the court cases from

Tegulet and Bulga province to determine if there is any detectable increase in land competition, recorded land sales or other contractual agreements such as seasonal rentals.

In both Ethiopia and Eritrea legal records are kept carefully. Indeed, some records can be found dating back to the turn of the century and earlier. A survey of court records was conducted for four years during the thirty-year pre-Revolutionary period. Initially, attempts were made to collect data from the years 1947, 1957, 1967 and 1974. If this failed because of a lack of availability, the years closest to those target years were collected. In any given sub-province, information on all of the cases that were lodged in the specified year was collected, however, this does not necessarily mean a record of every case was acquired. In many instances, case records had disappeared.<sup>20</sup> Thus the data set that exists is problematic, yet not entirely without use.

### ***Land Sales***

While we would expect an increase in land prices and land rental prices in reaction to increasing land scarcity, we can also expect an increase in the number of contested land sales. If land becomes more valuable, the temptation for individuals to sell increases, as do similar pressures on a lineage to keep land within the family and thereby available to future generations through inheritance. These pressures on land holding and acquisition should become visible in increasing competition for land and, according to property rights theory, rising competition should be followed by an institutional change in the land tenure system.

None of the information collected provides a good assessment of the demand for land on its own. However, there are several ways in which we can attempt to measure land competition. The first is by examining the number of land sales over time. Weissleder [1965] and Joireman [1996] both noted that although *rist* lands were supposedly inalienable in Tegulet and Bulga, land sales did, in fact, occur. We remind the reader of one caveat before looking at these figures; the data

collected are not a standard random sample. They are the entire record of civil litigation for three years (1947, 1967 and 1974) in the three decades before the revolution.<sup>21</sup> Often, a portion of the records was missing or destroyed so caution is needed in comparing incidence of sales across years. This warning aside, it is still worthwhile to search for trends in the data. When we examined the data for evidence of changing numbers of land sales over time, there was no detectable trend. The results were inconclusive because of the lumpiness of the data and the lack of consistent sample size across time. A second method of assessing trends in the data is to investigate total land cases over time. By using all cases instead of just land sales we will be able to capture the effect of the change in land values in whatever manner it is expressed, i.e., an increase in land rentals, inheritance disputes, sales, or lifetime rental contracts. Given the difficulty that existed in selling land, we might posit an increase in the amount of long-term land rental (*magazo*) or seasonal letting of land (*walad agad*). These results are displayed in Figure 2.

**[Figure 2 here]**

The results again are inconclusive. Even when we break the land cases down into all of their respective categories, we see no significant increase in land conflicts as time progressed. A breakdown of the cases over years and categories follows in Figure 3.<sup>22</sup>

**[Figure 3 here]**

Inheritance, which was often observed to be the principal source of conflict in communal areas, decreases as a percentage of conflicts over time but usurpation, disputes over the fruits of the land (the division of the harvest in sharecropping contracts), trespass and rent all increase slightly. The overall trend is a slight decline in land cases over time, yet land cases remain a large percentage of cases over all and the largest single category of dispute. The changing composition of the land cases, could be due to the diversification of contracts which was

occurring.<sup>23</sup> The author has noted elsewhere [Joireman 1996] the proliferation of rental arrangements prior to the revolution, specifically *irbo arash* and *ekul arash* share agreements in which the harvest was split with one-quarter or one-half of the crop going to the landlord. We can posit that over time the amount of the crop going to the landlord may have increased, with more *ekul* than *irbo arash* arrangements taking place, but we have no specific evidence to show that this was the case. What we do know is that as the value of land increased we see new contractual arrangements developing such as *yequm worse*, the bequeathing of land before a person dies. In this arrangement land is given to a person's heirs and the heirs pay a percentage of the crop as rent. We would have been able to detect conflict over rental contracts in two categories, land rental and fruits (short for fruits of the land, whatever they might be). In both areas we see increases in disputes over time as population pressure increases. The next highest category of litigation was contractual disputes over issues such as cattle or the division of property after a divorce.

Land conflict was high at the beginning of the study and high at the end with little change in the middle. We know from anecdotal reports and population growth that during this period land values were increasing, yet the land tenure system remained virtually the same. The diversification of rental contracts and the presence of greater conflict over land rental demonstrates some endogenous movement toward change at the margins of the land tenure system, but there is no significant detectable shift towards more securely held or individualized rights. While these attempts to detect any changes in the land tenure system prove fruitless, we know that the percentage of all cases over land in Shoa was much higher than it was in any of the other regions of the study, as Figure 4 displays below.

**[Figure 4 here]**

We have, then, a region of the country demonstrating a significant and consistent dispute over land rights, and increasing value of land constituting a change in relative prices with the only change in the land tenure being some diversification in rental contracts. This is a compelling set of observances. The demand for land transfer must have also increased. Sara Berry's research on land transfer in Kenya indicated that when the price of land increased in Kenya, people sold land in order to migrate to different areas, to pay school fees for children (future investment), to meet family expenses i.e. medical or bridewealth, to pay debts or to cover the costs of litigation [Berry 1992:127]. These needs were present in the Ethiopian context as well, but no legal market for land transfer developed. Moreover, there are other contexts in Ethiopia in which an increasing population led to a change in the local tenure system [Bauer 1972; Ellero 1995].

It is apparent that the impetus for changing land rights was present in North Shoa; we must now begin to evaluate intervening variables that may have prevented the change in tenure institutions from taking place. There are two intervening variables on which we will focus: the government and the rural nobility, an interest group noted for its influence.

### ***The government***

The question we seek to answer in this section is; did the government have any motivation to keep the system of property rights in the northern areas of the country in place? The simple answer to the question is no. The government had several opportunities to intervene in the traditional institutions of the north because of peasant uprisings and the gradual codification of laws which was taking place [David 1957; Mandefro].<sup>24</sup> Yet, the government did not choose to alter the traditional institutions in any way. Moreover, the northern parts of the country where coffee was not produced escaped government attention in all but the most extreme circumstances.<sup>25</sup> The concern of the Ethiopian central administration was not to maintain control over the more remote northern areas of the country, or to bleed the peasants with taxation, but



rather to allow political allies both to administer and expropriate without intervention in a type of indirect rule. Thus, the government had no interest in the affairs of the northern countryside apart from the interests of the northern elites whose compliance with the imperial regime Haile Selassie desperately needed. The northern elites were an important interest group during the imperial era both because of their role in administration and their support for Haile Selassie during the turbulent post-war era. Because of their power in the countryside, this rural nobility provided the most likely government in waiting, or potential pool of successors to the emperor. It is to this group that we must next turn.

### ***Regional Elites***

Did the regional elites, or rural nobility, have any interest in sustaining the status quo in the northern areas of the country? In discussing the intentions and effects of the regional elites on land tenure institutions in the north we must consider only those elites resident and holding interest in the northern, communal land tenure areas. Northerners who moved south to become landlords and coffee farmers are outside our immediate concern. Of the resident, northern elites we know several important facts. First, we know that they were constrained by the same land tenure system as the rest of the people in the area, the *rist* system. Second, we know that like other landholders in the area, they often engaged in litigation to gain access to land. However, members of the elite were more likely than other peasants to be a plaintiff<sup>26</sup> and, whether a member of the elite was a plaintiff or a defendant, he or she was more likely to win a land case than were peasants without status. While this last finding, is not tremendously surprising or counter-intuitive, it has important implications for the understanding of property rights of the region.

By the mid-1960s the average peasant would have been faced with increasing land values, an escalating population and restricted access to land through the traditional *rist* system.

To try to take advantage of market opportunities within the constraints of the traditional tenure institution we can imagine that peasants would have been engaged in more land rental as other land access was restricted. The court cases prove this conjecture true. We do see a rise in the percentage of cases over land rent [Joireman 1996]. Evidence on land rentals and contracts reveals that peasants were seeking to take advantage of changing market opportunities at the margins, through changing rental and share contracts. Peasants were restricted from embarking on more radical changes, such as the public buying and selling of land, by their traditional institutions which were not changing in the face of changing economic circumstances.

Among the elites, there was a very different story. A member of the rural nobility faced with the same set of economic opportunities had a different set of constraints and opportunities. Elites in search of more land might begin to take their neighbours to court for peripheral lands bordering on their farming areas and they usually won. The Appendix to this paper gives a quantitative analysis of court decisions in Tegulet and Bulga during the years preceding the revolution using probit regression analysis to determine the impact of both title and ethnicity on court decisions. The analysis indicates the importance of status, rather than ethnicity, in influencing court decisions in Tegulet and Bulga.

As stated earlier, it is impossible to determine to what degree land cases were increasing over time, but we can tell that elites were using the courts to gain land more often as time went on. Figure 5 demonstrates the incidence of titled plaintiffs over time.

**[Figure 5 here]**

The chart shows a sharp increase in the percentage of cases in which elites were plaintiffs and in which the nature of the dispute regarded land. Litigation over land may have been inheritance

cases, as the tenure system allowed relatives to claim land from descendants sometimes six generations back [Hoben 1973], or, cases regarding land usurpation or land trespass. Figure 6 demonstrates that as the relative price of land increased, elites chose to pursue litigation over land more frequently.<sup>27</sup> Because elites were more likely to win litigation once it began, [See Appendix] and because this fact was evident within the community in which they resided, it is probable that many of the instances in which elites impinged on land rights did not make it to the courts.

Elites in Tegulet and Bulga and throughout the communal tenure areas did not face the same constraints in acquiring land as did the peasants. In addition, extensive rights to land for the rural nobility were supported by the *rist* system of land tenure that assured the theoretical 'right' of a land claim back several generations thereby giving almost anyone in a community a theoretical claim to most of the land in that community. Traditional claims could be exploited by the elites, who could be said to be holding whatever land they had by traditional right. Why did the elites not move to change the system to one of private property? It was in their interest to do so as it would have made permanent their gains. However, there are two problems that exist with this very Western idea that a traditional elite group in a developing country would decide to change from a centuries old system of land holding to privatised property rights. The first is the inherent psychological contradiction that is involved. This elite group formed their identity based on their association with the past and their historic prestige in Ethiopia. Changing the system of land rights would mean compromising that identity. Moreover, altering the system of property rights would require collective action on the part of the elites, which would be difficult to achieve in this particular case because not all elites would have fully realized their *rist* rights when any change occurred. If the traditional system were to end or to transform itself somehow, the elites would lose their claim to much of their traditional lands by losing their *rist* 'rights'. Thus an individual only has an incentive to lobby for change when he or she is at the peak of his

or her power and cannot hope to acquire more land. Since everyone is unlikely to arrive at this point at the same time, collective action toward change would be hard to achieve.

Tegulet and Bulga demonstrated little change in property rights in response to a change in relative prices. Fortunately, the change in relative prices in the province occurred during a period for which we have access to records of litigation. These records allow us a glimpse of what was happening in the land holding system; a sight that would otherwise be impaired by the lack of a land market and adequate production records for this time. Within the time of the study, we do see slight changes in the land tenure institution. However, the changes, rather than being changes in the rules of the game - institutional changes - are alterations in the contractual agreements which occur at the margins of the institutional system and an increase in instances of non-cooperation and the resulting penalties, e.g. litigation costs.

It is our contention that the regional elites received preferential access to land under the traditional system. The interests of the regional elites presented a deterrent to any government moves towards changing property rights from above. It also impeded the development of any changes in property rights from within the society, as those most able to enact these changes were beneficiaries of the status quo.

## **Conclusion**

It is not entirely surprising that we find a break in the relative price change -institutional change relationship. The stability of institutional structures, once in place, has been noted in previous literature [Arthur 1989; David 1985; Rosenthal 1992]. Yet, there are two new observations herein. First, rather than being delayed, in some circumstances institutional change did not occur at all in response to changes in relative prices. In Tegulet and Bulga sub-province, there was no change in property rights before the revolution. It is obvious throughout the years of the study that pressures existed on the land tenure system, pushing it towards greater

privatisation or specification of rights. It is equally apparent that the tenure system as it existed served the interests of the regional nobility and, as a result, no change in institutions occurred.

Because we only observe these institutions until 1974 when the Ethiopia revolution brought a change in the land holding system throughout the country, we can only conclude that in the short-term we do not witness a change in property rights in response to a change in relative prices. This does not necessarily mean that the theory does not hold in the very long-term i.e. 75-100 years. We may be witnessing a short-term bargaining over institutions that leads to semi-permanent systems of property rights that 1) are held in place by political rather than economic forces and 2) have important (negative) distributional consequences for indigenous groups.

The second important conclusion to this study is that where institutional change did occur in response to relative price changes, it was not necessarily an endogenous, adaptive change. Endogenous changes are predicted by the property rights theory and by current theories of induced institutional change. In Sidama we did not see the peasants from the area incrementally moving towards specification of land rights over time or towards more individualized rights. Instead, institutional change came as an exogenous shock. In this case, another actor - the state- observed the change in relative prices and moved in to take advantage of it, leaving the indigenous population in a position worse than that in which it began. In Eritrea, we see the same effect. Relative prices changes occurred because of outside intervention and institutional modifications in land tenure were imposed from above, pushing the people into an institutional construct fraught with insecurity of land holding. In the Eritrean case institutional change was both exogenous and progressing in the wrong direction along the evolutionary line of property rights change.

What are different in these instances are the responses to relative price changes that were pursued by the same government in Sidamo and in Shoa (and left in place in Eritrea when the Imperial Ethiopian government took over there in 1952). Because we can identify separate

policy measures in different areas of the country we can ascertain beyond doubt that the reason behind state intervention was the assurance of state interests and those of its most important supporters, rather than simply revenue generation. Thus we have painted a scene in which political survival, rather than revenue generation – the claim of the public choice school – was the key determinant in at least one instance of property rights change that did not occur when predicted.

Finally, this article clearly indicates the need for further micro level field research to determine precisely how economic and political factors interact in generating or impeding property rights change in developing countries. This study had both the benefits and disadvantages of being historical, but the issue of how property rights changes are generated is without a doubt a contemporary issue in much of the developing world.

## Appendix

A probit regression technique is used to examine the effect of particular plaintiff characteristics on the decision of the case. Probit was chosen over other forms of regression analysis because the dependent variable, the decision of the judge, was dichotomous and could be coded as one, for the plaintiff, or zero, for the defendant. Due to the fact that so many of the cases in the sample had no decision at all, because of factors such as the nationalization of land which threw all land cases out of court the failure of the plaintiff or the defendant to appear or the existence of an out of court settlement, only 581 cases (approximately half the sample) are used for the probit analysis.

The object in running the probit regression was not to estimate the best model of all the factors affecting the decision of judges. Instead, it is an attempt to test the effect of different characteristics of the plaintiff and defendant on the outcome of the case. Plaintiffs and defendants in Tegulet and Bulga were identified as Amhara/ non-Amhara (1/0) in the ethnicity variable and titled/untitled (1/0) in the status variable. These are the two factors identified by informants as important in court decisions. Titled individuals in northern Ethiopia appended their titles to their names that made them easy to identify in the court cases. Ethnicity also was determined by name (through consultation with many informants as to origins) those cases involving individuals with undetermined or confusing ethnic origins were thrown out of the sample.

Coefficients in a multivariate probit cannot be interpreted in the same way as linear regression coefficients because of their categorical qualities. To make the results clear, the effect on the decision of a change in the variable from its zero value to its one value is presented, holding the other variable at its experimental mean. The important column is the last one that indicates the decision outcomes of the coincidence of various characteristics.

One further note before presenting the results is that the dependent variable of the decision of the court is recorded as zero or one. Therefore in reading the results  $y^* \geq .5$  is interpreted as  $P(y = 1)$ , and  $y^* < .5$  is interpreted as  $P(y = 0)$ . The model is a straightforward regression model,  $y^* = \alpha + \beta \text{ plaintiff ethnic group} + \beta \text{ plaintiff titled} + \beta \text{ defendant ethnic group} + \beta \text{ defendant titled}$ . The count  $r^2$  is simply a measure of the reliability of the probit model in predicting outcomes as suggested by Maddala [1989:279].

**[Figure 6 here]**

**[Figure 7 here]**

**[Figure 8 here]**

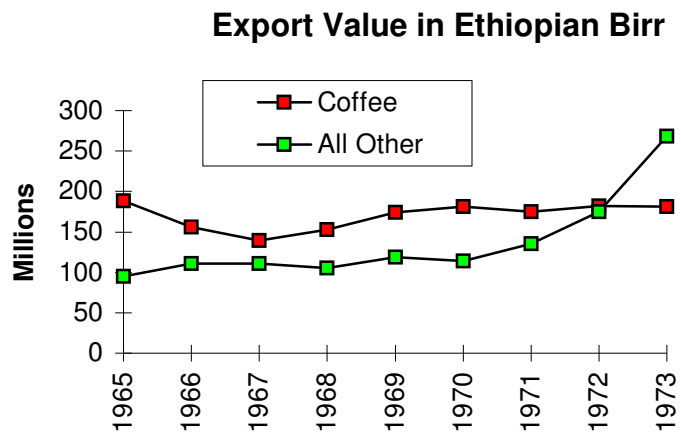
Correlation coefficients support this evidence.

**[Figure 9 here]**

Contrary to previous assessments of the area [Brietzke 1982; informant interview research notes 1994], it appears that the elite status of the plaintiff had a greater effect on the outcome of the case than did ethnicity. Ethnicity alone was no guarantee of success in court.



**Figure 1**



Source: Patrick Gilkes, *The Dying Lion* (1975), 140.

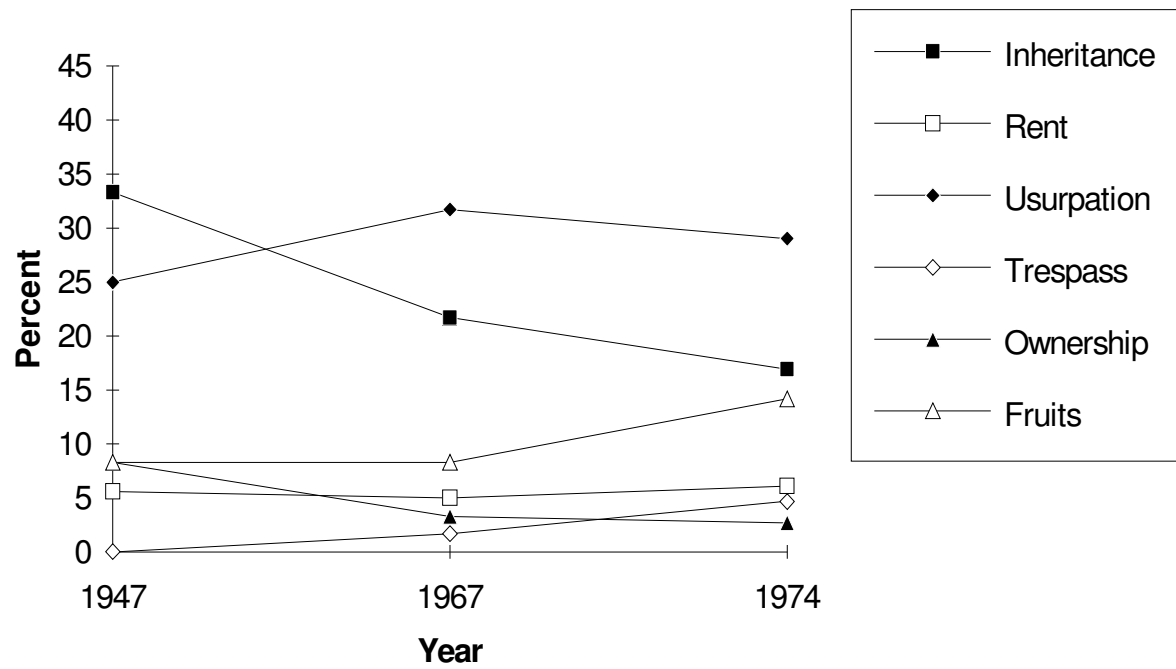
**Figure 2**

**All Land Cases Over Time in Tegulet and Bulga**

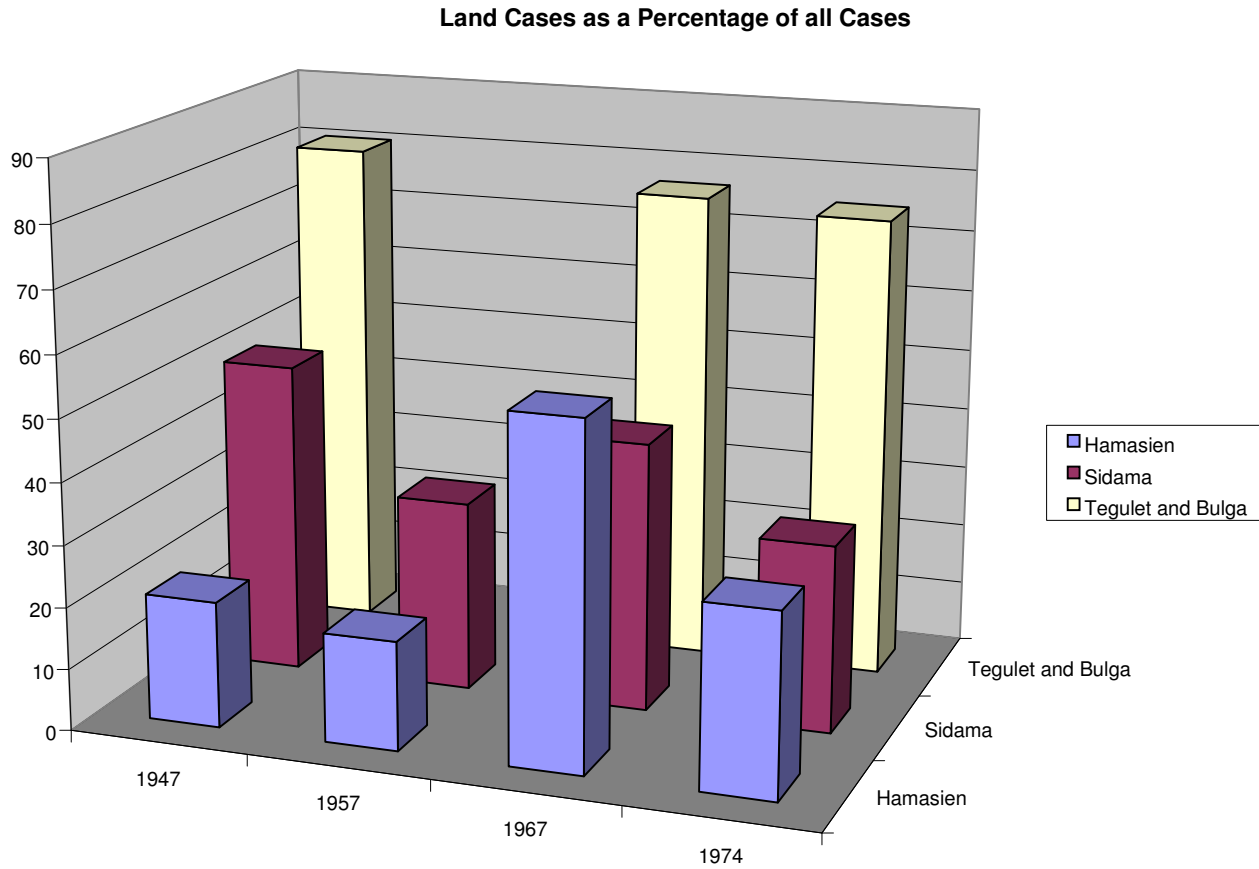
<b>Year</b>	<b>Number of Land Cases</b>	<b>Land cases as a Percentage of All Cases by Year</b>
1947	29	80.6
1967	49	81.7
1974	111	75.0

**Figure 3**

**Land cases over Time In Tegulet and Bulga**



**Figure 4**



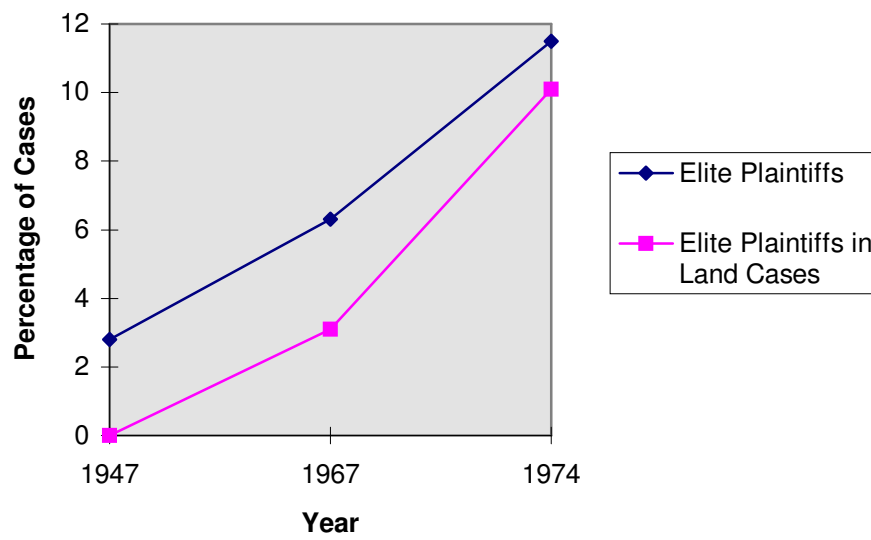
\* The number of cases for each year in Sidama and Hamasién is approximately 100.

\* Land cases for 1967 in Hamasién are particularly high due to action in the courts by the Government Treasury Office to recuperate back rent for government lands in the province. The Treasury Office launched fourteen cases which were recorded in this sample and distort the 1967 figure.

\* There are no cases in 1957 for Tegulet and Bulga because these records were not available. According to court officials they were burned by EPDRF soldiers who came through the area in 1991.

**Figure 5**

**Elite Litigation Across Time**



**Figure 6**

**PROBIT RESULTS**

<b>All Areas</b>				
		Coefficient	SE	T
Intercept		.5987		
Plaintiff	ethnic	-.3865	.1530	-2.52
group				
Plaintiff	office	.7260	.1680	4.321
holder/titled				
Defendant	ethnic	-.4703	.1557	-3.0213
group				
Defendant titled		.0112	.1883	.0593
<b>Count r<sup>2</sup></b>		.72		
<b>Tegulet and Bulga only</b>				
		Coefficient	SE	T
Intercept		.2255		
Plaintiff	ethnic	-.4997	.3642	-1.3722
group				
Plaintiff titled		.9056	.3977	2.2769
Defendant	ethnic	-.3178	.3626	-.8764
group				
Defendant titled		.7704	.4517	1.7056
<b>Count r<sup>2</sup></b>		.69		

**Figure 7**

**Tegulet and Bulga Probit Results**

	Experi mental N	Plaintiff Ethnic Group	Plaintiff Titled	Defendant Ethnic Group	Defendant Titled	Equation Result	Translation	Predicted Winner
1	4	0	0	0	0	0.25	0	Defendant
2	0	0	1	1	1	1.61	1	Plaintiff
3	2	0	0	1	1	0.7	1	Plaintiff
4	0	0	0	0	1	1.02	1	Plaintiff
5	10	1	0	0	0	-0.25	0	Defendant
6	1	1	1	0	0	0.66	1	Plaintiff
7	9	1	1	1	0	0.34	0	Defendant
8	3	1	1	1	1	1.11	1	Plaintiff
9	0	0	1	1	0	0.84	1	Plaintiff
10	0	1	0	0	1	0.52	1	Plaintiff
11	0	0	1	0	1	1.93	1	Plaintiff
12	73	1	0	1	0	-0.57	0	Defendant
13	0	0	1	0	0	1.16	1	Plaintiff
14	9	0	0	1	0	-0.07	0	Defendant
15	5	1	0	1	1	0.2	0	Defendant
16	0	1	1	0	1	1.43	1	Plaintiff

116

Summary: Of the 8 combinations in which the plaintiff is titled, the plaintiff is the predicted winner in 7.

**Figure 8**

**Combined Areas Probit Results**

$$Y^* = .60 - .39PEG + .71PT - .47DEG + .01DT$$

	Experimental N	Plaintiff Ethnic Group	Plaintiff Titled	Defendant Ethnic Group	Defendant Titled	Equation Result	Translation	Predicted Winner
1	300	0	0	0	0	.60	1	plaintiff
2	4	0	1	1	1	.87	1	plaintiff
3	8	0	0	1	1	.14	0	defendant
4	26	0	0	0	1	.61	1	plaintiff
5	36	1	0	0	0	.21	0	defendant
6	12	1	1	0	0	.94	1	plaintiff
7	15	1	1	1	0	.47	0	defendant
8	6	1	1	1	1	.48	0	defendant
9	9	0	1	1	0	.86	1	plaintiff
10	0	1	0	0	1	.22	0	defendant
11	6	0	1	0	1	1.34	1	plaintiff
12	83	1	0	1	0	-.26	0	defendant
13	45	0	1	0	0	1.33	1	plaintiff
14	22	0	0	1	0	.13	0	defendant
15	7	1	0	1	1	-.25	0	defendant
16	2	1	1	0	1	.95	1	plaintiff

581

Summary: Of the 8 combinations in which the plaintiff is titled, the plaintiff is the predicted winner in 6.



**Figure 9**

**Nonparametric Correlations Tegulet and Bulga**

			Correlations				
			Decision	Plaintiff Ethnic Group	Plaintiff Titled	Defend Ethnic group	Defendent Titled
Spearman's rho	Correlation Coefficient	Decision	1.000	-.083	.225*	-.099	.170
		Plaintiff Ethnic Group	-.083	1.000	.140	.158	-.051
		Plaintiff Titled	.225*	.140	1.000	.055	.173
		Defend Ethnic group	-.099	.158	.055	1.000	.122
		Defendent Titled	.170	-.051	.173	.122	1.000
	Sig. (2-tailed)	Decision	.	.368	.011	.280	.056
		Plaintiff Ethnic Group	.368	.	.125	.091	.576
		Plaintiff Titled	.011	.125	.	.544	.052
		Defend Ethnic group	.280	.091	.544	.	.180
		Defendent Titled	.056	.576	.052	.180	.
	N	Decision	127	121	127	122	127
		Plaintiff Ethnic Group	121	121	121	116	121
		Plaintiff Titled	127	121	127	122	127
		Defend Ethnic group	122	116	122	122	122
		Defendent Titled	127	121	127	122	127

\*. Correlation is significant at the .05 level (2-tailed).

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<sup>1</sup> Institutional change has also been incremental developing slowly as economic incentives change. State intervention in the distribution of property rights is a subset of the larger category of property rights change.

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<sup>2</sup> A key caveat is that suggested by Firmin-Sellers (1995) that this would be true only if the state enforced these changes.

<sup>3</sup> Platteau gives this appellation to theories assuming a forward motion of land tenure systems from collective rights to privatization.

<sup>4</sup> This conclusion is opposed by Bruce and Migot-Adholla, *Searching for land Tenure Security in Africa*, 1994.

<sup>5</sup> Although Marcus (1996) would argue that Haile Selassie, then Ras Tafari, began establishing the mechanisms for exploiting the coffee growing potential of the region in the 1920s.

<sup>6</sup> The word means a man who carries a gun.

<sup>7</sup> The primary difference between landlords and overlords was that the landlords were content to extract a percentage of the crop and perhaps the occasional labor requirement from their tenants whereas the overlords truly treated their tenants as serfs, requiring large quantities of their time for labor as well as a percentage of their crops and various other traditional taxes such as honey and alcohol. See Alessandro Triulzi, "Competing Views of National Identity," in I.M. Lewis, *Nationalism and Self-Determination in the Horn of Africa* (London: Ithaca Press, 1983).

<sup>8</sup> See Giovanni Ellero (1995) for a discussion of Wolqait or Uolcait and the interconnected economies of the highland and lowland regions.

<sup>9</sup> *Risti* was also called *risti tselmi* or just *tselmi* in Eritrea but, for the sake of convenience, this regional variation in terms will be ignored.

<sup>10</sup> See Donald Crummey (2000) for a complete discussion of the *gult* system on the highland plateau.

<sup>11</sup> Memo July 10, 1921, No. 2010, from Commissariato Reg. del Barca, to The Governor of the Colony and Director of Civil Affairs, Asmara, regarding the Ad Ciafa Tribe in the Sciaber valley.

<sup>12</sup> The reasons for the Italian transition to *diessa* tenure are discussed at length in Taddia (1986).

<sup>13</sup> Report of the Commissariato Regionale del Seraye, Della proprieta terriera in Ethiopia e in Eritrea, Circa 1905, Pacco 279, Archivo Eritrea.

<sup>14</sup> Although peasants could still invest in the plot of land on which their house stood as this was untouched in any redistribution.

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<sup>15</sup> Yet again this institutional stasis was probably due to political factors as Eritrea was engaged in a revolutionary war from 1961-91.

<sup>16</sup> Firmin-Sellers observes a similar occurrence in the Gold Coast, *The Transformation of Property Rights*, (1996).

<sup>17</sup> Allan Hoben 's, *Land Tenure Among the Amhara of Ethiopia* (1973) is the seminal work on the rist tenure system.

<sup>18</sup> Richard Pankhurst notes that especially in the countryside, Maria Theresa dollars from the nineteenth century were the only accepted form of currency. The Maria Theresa dollar was so well known by Ethiopian peasants that they would reject as counterfeit any coin that did not have the specified number of pearls in the necklace of the monarch. Richard Pankhurst, *An Economic History of Ethiopia*, Addis Ababa: Haile Selassie I University Press, 1968.

<sup>19</sup> The preponderance of grain traders and the reach of the grain market in Ethiopia has been documented by several empirical studies, i.e. Bo Wickstrom, "Increasing Efficiency in the National Grain Marketing System of Ethiopia," EPID Publication No. 14, Addis Ababa, 1973, M. de Young, " The Internal Marketing of Agricultural Products and its influence on Agricultural Productivity and Income," *Ethiopian Observer*, 11(1) pp. 16-35, 1976, K. Eubanks, "Market Structure Study Related to Those Commodities that provide the basic Subsistence for the people of Ethiopia," Ministry of Agriculture, Addis Ababa, 1973, and A.R. Thodey, "Marketing of Grains and Pulses in Ethiopia," *Stanford Research Institute*, Report No. 16. 1973. Infrastructure in Shoa province was the bare minimum necessary to ensure the movement of produce to Addis Ababa. Tegulet and Bulga was fortunate in that the major road to the north of Ethiopia ran directly through the sub-province.

<sup>20</sup> In one instance the disappearance of case files was attributed to soldiers burning government documents to keep their barracks warm.

<sup>21</sup> In other areas we were able to collect four years of litigation records but, in Tegulet and Bulga the records for one of the years were so brief (naming only the litigants and a large subject area, i.e. land) that they were not used.

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<sup>22</sup> The category 'Fruits' refers to disputes over the produce of a certain area of land, usually because of a sharecropping dispute or a particular rental arrangement. Locally, these contracts were not filed as rental disputes so I have maintained the categories as assigned by the courts.

<sup>23</sup> The diversification of rental contracts over time in Ethiopia is discussed at length in S.F. Joireman, "Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia," *Canadian Journal of African Studies*, 30(3), 1996.

<sup>24</sup> Ethiopia rewrote its civil law code in 1960 and mentioned the communal tenure areas, but only to say that the communal lands should not be sold.

<sup>25</sup> Such as outright peasant rebellion as was the case during the Gojjam tax revolts.

<sup>26</sup> Indexing of the plaintiff to defendant ratio of titled litigants verses untitled litigants with one indicating no bias, less than one demonstrating that the group has a greater propensity to be a plaintiff than defendant and more than one meaning that the group is more likely to be sued. The results of this simple test give an index of .77 for titled and 1.02 for untitled peasants.

<sup>27</sup> We are assuming here that the pool of titled individuals *resident* in Tegulet and Bulga was not growing significantly over this period.